



STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

801 K Street • Suite 2015 • Sacramento, California 95814

Policy and Legislation Committee

Brian Baca, Chair; Erin Garner; Benjamin Licari; Kathy Lund

www.conservation.ca.gov/smgb
smgb@conservation.ca.gov



Approval Date: January 14, 2010

CONFORMED MINUTES

THE POLICY AND LEGISLATION COMMITTEE (Brian Baca, Chair; Erin Garner; Benjamin Licari; Kathy Lund) OF THE STATE MINING AND GEOLOGY BOARD

Conducted a Meeting on:

Draft

Thursday, November 12, 2009

8:30 A. M.

Board of Supervisor's Hearing Room
County Government Center, Building A
330 Fair Lane
Placerville, CA 95667

AGENDA

For questions regarding this Agenda, please contact the SMGB office by telephone at (916) 322-1082, or by facsimile at (916) 445-0738. This Notice and associated staff reports can be accessed electronically at the SMGB's Internet web site at: <http://www.consrv.ca.gov/smgb/> (note: Agenda reports should be available electronically approximately one week prior to the scheduled meeting/hearing date).

The SMGB requests that all lengthy comments be submitted in writing in advance of the meeting date. To ensure that the SMGB has the opportunity to fully preview written material, comments should be received in the SMGB office no later than 15 days prior to the scheduled meeting date, and must indicate the Agenda Item to which it relates. For written material in excess of two pages, or that contains large maps, photos, foldouts, or other documents requiring special handling, please submit 12 copies. The SMGB will not reproduce these types of documents. Comments on Agenda Items will be accepted by electronic mail, and are subject to the same conditions set forth for other written submissions.

Individuals are responsible for presenting their own projects at the meeting.

[NOTE: Times are approximate. The chairman may alter the hearing start time or agenda item order during the meeting]

I. Call to Order (Baca)

II. Roll Call and Declaration of a Quorum

The committee meeting was called to order at 8:30 A. M. All committee members were present at the time of roll call, and a quorum was declared.

III. Consent Items [Action]

[All the items appearing under this section will be acted upon by the committee by one motion and without discussion; however, any committee member wishing to discuss a particular item may request the Chairman to remove the item from the Consent Calendar and consider it separately under Continued Business or New Business]

1. Approval of Minutes, July 12, 2007, Committee Meeting.

Board Member Garner moved to approve the minutes. Board Member Licari seconded and the motion carried with a unanimous voice vote.

2. Approval of Minutes, September 7, 2007, Committee Meeting.

Approval of the September 7, 2009, minutes was deferred.

IV. Continued Business [Action]

[These business items have been continued from a previous meeting/hearing]

No continued business discussed.

V. New Business [Action]

3. Consideration of Amendment to Administrative Procedures for Submittal of Documents to the State Mining and Geology Board.

Executive Officer Testa stated that for items before the SMGB, unless otherwise specified in the public notice for a specific item, the SMGB requires interested persons to submit to the SMGB twelve (12) written copies of all comments, technical reports, and other material concerning any matters on their agenda at least fifteen (15) days prior to the hearing date. These written materials are subsequently provided to the SMGB along with the full agenda materials. In addition, persons submitting written comments and other materials should be present at the SMGB meeting and be available for questions. The SMGB is reviewing its policy for the submittal of documents and information for items on its agenda.

- Adam Harper, Director of Policy Analysis for the California Construction and Industrial Materials Association (CalCIMA), stated that it was good for the SMGB to have a policy for submittal of documents and a specified timeframe. Being a professional association, adequate time for such organizations to respond to submittals needs to be considered.
- Committee Member Licari expressed the need for balance, and that the policy needs to be fair, open and transparent. Concern over submittal of materials at the last minute or during the public hearing from opposing attorneys is frustrating. A need for fairness is required, but adequate time for review is necessary, as expressed by SMGB Chairman Garner during previous meetings.



- Committee Member Garner expressed his thoughts on last minute submittal of documents, and in his experience with other public venues, late submittals are commonplace, and public bodies are frequently frustrated by these submittals. The public forum is frequently abused because in some cases, the intent is to delay a decision. He proposed, at minimum, date stamping late submittals, so they are recognized by the SMGB as late for consideration submittals. The concept of "late" would need to be clarified. This is readily apparent when dealing with comments received under the California Environmental Quality Act (CEQA), whereas, all comments received must be responded to by law. Late submittals are fundamentally unfair.
- Committee Chairman Baca concurred with Member Garner's comments, expressed the need for a fair and rational process, and equal opportunity for all stakeholders to be timely, and proposed a one-page document that could be considered at the public hearing/meeting which would succinctly reflect the testimony or last minute change in position.
- Executive Officer Testa clarified two general categories of late submittals: 1) late submittals pertaining to specific agenda items, and 2) late submittals in response to the Executive Officer's report.
- Committee Member Lund arrived and was recognized, and expressed her concurrence with what has been discussed, and recognized after participating on numerous city counsel meetings, the need for, and adherence to, deadlines.
- The SMGB's legal counsel, Rick Thalhammer, stated that the Committee and SMGB have the authority to establish procedures and as long as such procedures are fair and open to the public. Documents are not deemed late until a deadline is determined in agenda and regulation, and the SMGB should not consider late submittals, and needs to be consistent and careful when considering what should be allowed as part of an administrative record before the SMGB and what is not. Once determined, the SMGB needs to follow its procedures.
- Committee Chairman Baca suggested submittal of documents at the SMGB's office by 5:00 P.M., 15 days prior to hearing, or such documents will not be incorporated in the administrative record, but the SMGB could entertain a one-page document at a public hearing.
- Committee Member Licari concurred and noted that such a summation of testimony would serve as a safety net, and inquired from Legal counsel about power point presentations.
- Legal Counsel Thalhammer stated that the SMGB could accept or deny late submittals of power point presentations, but the more discretion allowed, the more opportunity for abuse and compliance. The SMGB does have the three-minute rule which allows for testimony and submitted documents become part of the administrative record. The SMGB packet prepared by the Executive Officer is a full accounting of the matter before the SMGB for consideration, and the public hearing is not the venue to receive new information for consideration. The SMGB, however, is not precluded from deferring or continuing a matter for consideration before the SMGB until a later date. The packet should reflect all pertinent information to be considered before the SMGB.
- Committee Member Garner reiterated that a deadline should be a deadline and that late submittals should not be considered as part of the administrative record, but could be recognized. A one page submittal could be accepted in the administrative record under the judgment or discretion of the SMGB, Committee or Chairperson.
- Member Lund expressed the merits of accepting a one-page summary of testimony at a public hearing since a stakeholder or member of the public may not be prepared or wish to comment verbally.



- Committee Chairman Baca concurred and a one page written summary to parallel testimony would be acceptable.

Board Member Licari moved to approve development of a draft policy for submittal of documents and information for items on the SMGB's agenda. Board Member Lund seconded and the motion carried with a unanimous voice vote.

VI. Good of the Meeting [Information]

[This time is scheduled to provide the public with an opportunity to address non-agenda items. Those wishing to speak should do so at this time. All persons wishing to address the Committee should fill out a speaker card and present it to the Secretary so that the Chair can determine the number of persons who wish to speak. Speakers are limited to three minutes except by special consent of the Chairman]

- John Hecht, Consultant and President of Sespe Consultants, inquired as to whether the SMGB should have a due process or appeal role in the removal by the Department of Conservation Office of Mine Reclamation of surface mining operations/operators from the AB 3098 list, notably, in consideration of short-term fixes but long-term approval process, or removal based on faulty information.
- Art Marinaccio, a consultant in El Dorado County, expressed the need for the SMGB to look at the overall process of regulating mines, considering the significant decrease in the number of active mines over the past decades, results from the existing regulatory process, and analysis of policies such as the local rule adopted about 25 years ago in El Dorado County that theoretically prohibits mining within two miles of any residential area within the jurisdiction of the County, which conflicts with the State's intent.

VII. Continuing Business [Information]

[This item is provided as an opportunity for any SMGB Committee member to receive information on or any items of continuing interest to the SMGB.]

No continued business for the committee's information was presented or discussed.

VIII. New Business [Information]

[This item is provided as an opportunity for any SMGB Committee member to bring any item of new business to the Committee's attention for further discussion and further action.]

No new business for the committee's information was presented or discussed.

IX. Announcements of Future Meetings

The next meeting of the Policy and Legislation Committee will be scheduled prior to the SMGB's next regular business meeting.



X. Adjournment

The Committee meeting was adjourned at 9:15 A.M.

APPROVED

Brian Baca, Chairman

Stephen M. Testa, Executive Officer

